

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE  
DIRECTOR

January 20, 1994  
AO-94-01

Mr. Peter Roaf  
61 Gray Street, Apt. 2  
Amherst, MA 01002

Re: Definition of "public employee"

Dear Mr. Roaf:

This letter is in response to your December 8, 1993 request for an advisory opinion.

You have stated that you would like to be a treasurer of a political committee. You are currently an officer of the University of Massachusetts-Amherst Undergraduate Student Government Association. You fill an elected position in the Student Government Association and you are paid from the Student Activities Trust Fund.<sup>1</sup>

You have asked if you would be considered a public employee within the context of M.G.L. c. 55, the campaign finance law.

M.G.L. c. 55, s. 13 provides, in pertinent part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such person from being members of political organizations or committees.

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<sup>1</sup>. The trust fund is funded by the collection of a mandatory fee from students. The fund is administered by University officers, subject to the direction of the Board of Trustees, who are authorized by statute to determine how the fees are to be spent. See M.G.L. c. 15A, s. 10 and Student Government Association v. Board of Trustees, 868 F.2d 473, 478 (1st Cir., 1989).

Section 13 is designed to assure fairness and the appearance of fairness in the electoral process. See Anderson v. City of Boston, 376 Mass. 178, 193 (1978). Section 13, together with the restrictions in sections 14 and 15, "demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id., at 187.

It is the general opinion of this office that any person who is not an elected officer or independent contractor who is paid directly any sum by the commonwealth, or a subdivision thereof, to perform services, is subject to the prohibitions of section 13. See AO-90-10. This office has also advised that such persons may not serve as the treasurer of a political committee. See AO-84-02. Such action necessarily involves at least indirect receipt of political contributions, which would be prohibited under section 13.

Your duties as treasurer of the University Undergraduate Student Government Association involve receipt of compensation from a trust fund which is under the control of the commonwealth or one of its subdivisions. However, your serving as treasurer while at the same time becoming involved in political fundraising would not create an appearance of unfairness in the electoral process.

Since you are elected to your position by students, you are under the control of other students rather than the University administration. A student government officer is selected by students, not the University. A student government officer's relationship to the University is more akin to that of an "independent contractor" rather than that of a "public employee." See AO-93-24.

Therefore, it is the opinion of this office that you are not "employed for compensation by the commonwealth" within the context of the campaign finance law, and you are not subject to section 13's restrictions on political fundraising.

In addition to the provisions of the campaign finance law referred to above, I call your attention to M.G.L. c. 55, s. 14, which states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen."


If you become a treasurer of a political committee while a student at the University of Massachusetts, you should keep in mind that University buildings are "occupied for state purposes." Therefore, your committee may not solicit or receive contributions in such buildings.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c. 55.

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I am enclosing a series of introductory guides prepared by this office, which contain further information regarding the campaign finance law. Please do not hesitate to contact this office if you have additional questions.

Very truly yours,

  
Mary F. McTigue  
Director

Enclosures

cc: Sidney Myers, General Counsel  
University of Massachusetts, Amherst